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13 State Bar No. 012515
14 P.O. Box 43505
15 Tucson, Arizona 85733
16 Tel.: (520) 882-2080 FAX: (520) 882-3002
17 rick@lougeelaw.com
18

19 IN THE COCHISE COUNTY SUPERIOR COURT
20 IN AND FOR THE STATE OF ARIZONA
21

State of Arizona,

Plaintiff,

vs.

Jeffrey Ross Welch,

Defendant.

Case No. CR201800253

MOTION TO CONTINUE
TRIAL

Assigned to:

Honorable James L. Conlogue

22 Defendant Welch, by and through counsel undersigned, hereby
23 respectfully requests a continuance of his trial. Trial is currently scheduled
24 for July 9, 2019.
25

26 Counsel request this continuance due to a trial conflict for Mr.
27 Lougee. He begins a trial in the Pima County Superior Court on July 9,

FILED
2019 APR 25 AM 11:47
CLERK OF SUPERIOR COURT
YMM

1 2019, in the case of *State v. Castro*, Case No. CR2015-4580-001, before
2 the Honorable Howard Fell. It is anticipated this trial will take ten (10)
3 days.

4 Defense counsel also have a trial scheduled in the United States
5 District Court in Phoenix commencing on August 13, 2019, *United States*
6 *v. Mendoza*, Case No. 3:18-cr-08246 DGC-1, before the Honorable David
7 G. Campbell, that will take approximately four (4) days. Counsel request
8 the continuance so all cases may receive the proper amount of preparation
9 time for trial.

10 The defense has pointed out to the State the many issues it has in
11 proceeding with this case. See Letter to DCA Sara Ransom dated March
12 14, 2019 attached as Exhibit A. No response has ever been received to this
13 letter.

14 Additionally the defense investigator was informed by the Cochise
15 County Sheriff's Office on April 1, 2019 that a records request pending
16 since last December was being denied because: "... this case is still
17 pending and investigation is on-going. It also involves a minor child, and it
18 is in the best interests of the state to withhold disclosure." See email chain
19 attached as Exhibit B.

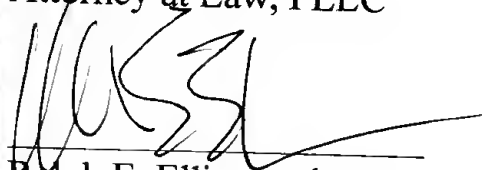
1 Therefore there are substantial issues that need to be addressed as
2 well as disclosure obtained before this case can proceed to trial if that is
3 the State's intention.

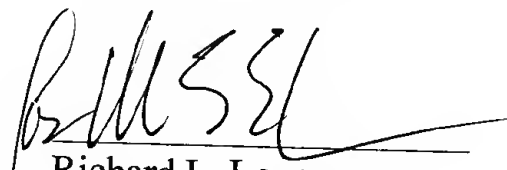
4 This continuance is not requested for purposes of delay but rather
5 for the right of Defendant to receive effective assistance of counsel,
6 present a defense, receive due process and a fair trial.

7 RESPECTFULLY SUBMITTED this 23rd day of April 2019.

8 Ralph E. Ellinwood,
9 Attorney at Law, PLLC

Law Office of Richard L. Lougee

10 
11
12
13 Ralph E. Ellinwood
14 Attorney for Defendant

15 
16
17 Richard L. Lougee
18 Attorney for Defendant

19 Copies of the foregoing mailed/delivered
20 this 23rd day of April 2019 to:

21 Clerk of the Superior Court
22 Cochise County
23 P.O. Box CK
24 Bisbee, AZ 85603
25 Honorable James L. Conlogue
26 Cochise County Superior Court
27 100 Quality Hill
28 Bisbee, AZ 85603

29 Brian M. McIntyre, Esq.
30 Sara Ransom, Esq.
31 Cochise County Attorney
32 P.O. Drawer CA
33 Bisbee, AZ 85603

EXHIBIT A

Attorney at Law

March 14, 2019

Sara Ransom
Deputy County Attorney
Cochise County Attorney's Office
P.O. Drawer CA
Bisbee, AZ 85603

RE: State of Arizona vs. Jeffrey Ross Welch, CR2018-00253

Dear Ms. Ransom:

We are writing to furnish information that should lead you to abandon the continued prosecution of this case. As we met with County Attorney McIntyre while you were on medical leave, we are copying him with this letter to give the matter needed continuity.

At this juncture we will not discuss the many problems with the state's investigation and prosecution of this case, some of which predated your role in it. However, we are grateful to County Attorney McIntyre for providing us with the video of the child's forensic interview, evidence which is Brady material and which should have been disclosed prior to the expiration of the time permitted for the defendant to challenge the grand jury presentation. But again, this letter will not address the legal missteps in this case, which are legion, but will focus entirely on what our investigation has found and why these findings require this case be dismissed immediately.

As County Attorney McIntyre astutely observed in our meeting, the case against Jeffrey Welch is based entirely on an "identification" by Genny [REDACTED] which is itself based on her interpretation of the information provided by her daughter. Since we do not know what the child actually told her mother during the "bathroom disclosure", we are left with the forensic interview. Given the importance of this interview and the unsynchronized and poor quality of the audio of the interview provided to us, we have had the video and the audio synchronized and the audio enhanced by an expert. Based on the forensic interview of the child and our extensive investigation of the facts in and arising from that interview, we have constructed the following timeline:

- A) The defendant (hereafter "Jeffrey") and his wife Janice visited his son Jeremy's home in Sierra Vista from September 16 to September 26, 2017. Their next visit was on January 19, 2018, the date Jeffrey was arrested.

- B) Genny's parents, Chuck and Delana [REDACTED], visited the victim and her family from December 11, 2017 to January 19, 2018 and stayed in the victim's home assisting Genny with the new baby.
- C) Genny [REDACTED] gave birth to a baby boy, Reece, on December 17, 2017.
- D) The victim told her mother about being molested on December 28, 2017 after a bath. Genny called the police December 29, 2017.
- E) Deputy Zavala interviewed the victim's parents at their home on December 29, 2017. Chuck and Delana [REDACTED] were present at the time. Zavala was told the victim allegedly discussed the allegations with Chuck the same day she told her mother. The police did not talk to Chuck until after the defense meeting with County Attorney McIntyre.
- F) The victim was taken to Lori's Place for a forensic interview on January 3, 2018 (while Chuck was still at the family residence).
- G) The case against Jeffrey was first presented to a grand jury and a summons and indictment issued on March 8, 2018.
- H) The defense attorneys and their investigators met with County Attorney McIntyre at his office on September 19, 2018. The defense team told Mr. McIntyre about the child's forensic interview and showed him the attached photograph taken from Genny's Facebook account. The photograph shows Jeremy holding the victim as an infant surrounded, from left to right, by Chuck, Delana's father and Jeffrey.
- I) Detective McGeoghan interviewed Chuck telephonically on October 23, 2018. Chuck admitted he had long had a beard. Jeffrey has never had one according to both Jeremy and Genny.

As we have stated, we have conducted extensive investigation in this case from which the following salient and virtually dispositive facts arise:

1. The child is telling the forensic interviewer the guilty "papa" is in "her" room in her home as of the time of the interview. That is Chuck. Transcript page 10, lines 1-14.
2. The child is telling the forensic interviewer in the present tense "if the police cars are comin' to see him he will go to jail...". That is Chuck. Transcript page 9, lines 39-41.
3. The child is telling, and demonstrating in the video, how she grabs and pulls the beard of the guilty papa who is bald and wears glasses. Transcript page 12 lines 16-41. NOTE: See attached family photograph. Only Chuck is bald and has a beard. As for glasses, in the enhanced audio of the forensic interview the child is heard saying the following: "well, actually, I think he has glasses for

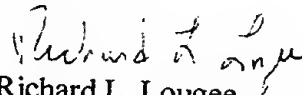
the sun when it gets a little hot." In the family photo Chuck has sunglasses hanging from his belt. Family members have said they have heard the victim call Chuck "papa".

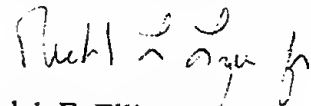
You should also know about an incident in Michigan that occurred when Genny and the victim visited in October 2017, a month after Jeffrey supposedly molested the child. During the visit the child pleaded with Genny to allow her to stay with Jeffrey and his wife rather than to stay with Chuck and Delana as was planned. While Wendy Dutton may opine "children love their abusers," juries often use their common sense and find this troubling.

As we discussed with County Attorney McIntyre, we have witnesses who will testify Genny had a history as a "cutter" which continued until after she met Jeremy, and Jeffrey and Janice strongly urged Jeremy not to marry her. Genny resented this. Since Genny initially questioned the child and identified Jeffrey as the guilty "papa" based on her interpretation of the child's disclosure, the state should not rely on the uncorroborated evidence she has provided to prosecute Jeffrey.

The information we have detailed in this letter does not just create a reasonable doubt as to Jeffrey Welch's guilt in this case. It points directly to the guilt of Chuck [REDACTED], the father of a "cutter" and the individual revealed after a genuine investigation to be the perpetrator. We ask you to dismiss this case without delay. It is not one where ideological preconceptions or adversarial competitiveness should cause the case to linger. Not only is an innocent man being subjected to the horrific prospect of life imprisonment; each day that goes by, the victim and her brothers are at risk of continued sexual abuse by the actual perpetrator. We ask you to dismiss this case and to refer the matter to DCS to investigate Chuck [REDACTED] and the risk he poses to his grandchildren. Thank you.

Sincerely,


Richard L. Lougee
Attorney for Jeffrey Welch


Ralph E. Ellinwood
Attorney for Jeffrey Welch

cc: Jeffrey Welch
Cochise County Attorney Brian McIntyre

EXHIBIT B

Randy Downer

Mon 4/8/2019 3:26 PM

Inbox

To: Lacee Tellez <lacee@iisaz.com>;

Cc: 'Rick Lougee' <rick@lougeelaw.com>; Ralph Ellinwood <ree@yourbestdefense.com>;

Folks, back in December of last year, we sent a follow up records request to the Cochise County Sheriff's Department, for copies of any reports/records generated subsequent to our meeting with McIntyre. Start from the bottom. Recently, (3 months later) Lacee got the response below, which of course is counter to Arizona Public Records Law. We did not argue with her, and just said thanks.

If you want us to pursue the records, let us know.

From: Lacee Tellez <lacee@iisaz.com>
Sent: Monday, April 01, 2019 10:19 AM
To: Randy Downer <randy@iisaz.com>
Subject: FW: Public Record Request

See email below from Cochise Count regarding the Welch supplements we have been waiting on.

Lacee Tellez
Inter-State Investigative Services
Phone 520.882.2723
email: lacee@iisaz.com
website: www.iisaz.com
The Information Edge ®



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From: Capas, Carol <CCapas@cochise.az.gov>
Sent: Monday, April 01, 2019 9:49 AM
To: Lacee Tellez <lacee@iisaz.com>; Townsend, Debora <DTownsend@cochise.az.gov>
Subject: Re: Public Record Request

In case you have not previously received an email regarding this request please be advised that this case is still pending and investigation is on-going. It also involves a minor child, and it is in the best interest of the state to withhold disclosure.

Cc

Carol A. Capas

Cochise County Sheriff's Office

Support Svc Supervisor/Public Information Officer

520-432-9504 Office

520-559-4920 Cell

From: Lacey Tellez <lacee@iisaz.com>
Sent: Monday, December 17, 2018 12:14:08 PM
To: Capas, Carol
Cc: Townsend, Debora
Subject: RE: Public Record Request

Hi Carol,

May I please get a copy of each supplement? Also, how may I pay for these?

Thank you,

Lacey Tellez
Inter-State Investigative Services
Phone 520.882.2723
email: lacee@iisaz.com
website: www.iisaz.com
The Information Edge ®



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From: Capas, Carol [<mailto:CCapas@cochise.az.gov>]
Sent: Monday, December 17, 2018 11:03 AM
To: Lacey Tellez
Cc: Townsend, Debora
Subject: Fw: Public Record Request

Ms. Tellez,

There are five supplemental reports for the DR number you listed, each after the December 2017 time frame.

Cc

Carol A. Capas

Cochise County Sheriff's Office

Support Svc Supervisor/Public Information Officer

520-432-9504 Office

520-559-4920 Cell

From: Townsend, Debora
Sent: Monday, December 17, 2018 10:00 AM
To: Capas, Carol
Cc: Johnson, Tiffany
Subject: FW: Public Record Request

Carol,

Please process the highlighted request below, and keep me included in all communications with the request so I can track its progress.

Sincerely,

Debora Townsend
Legal Secretary III
Public Records Request Coordinator

Bisbee, AZ 85603
Phone: (520) 432-8757
Fax: (520) 432-8778
dtownsend@cochise.az.gov

Public Programs...Personal Service

www.cochise.az.gov

From: Lacey Tellez <lacee@iisaz.com>
Sent: Thursday, December 13, 2018 2:03 PM
To: Townsend, Debora <DTownsend@cochise.az.gov>
Cc: Lacey Tellez <lacee@iisaz.com>
Subject: Public Record Request

Good afternoon,

Attached find a public record request form. I am most interested if there has been any new supplement to CCSD report # 17-38218, since December 2017.

Please let me know if you need anything further.

Thank you in advance for your assistance.

Lacey Tellez
Inter-State Investigative Services
Phone 520.882.2723
email: lacee@iisaz.com
website: www.iisaz.com
The Information Edge ®



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